

November 14, 2018

Mr. Eric J. Chodnicki  
Daft McCune Walker, Inc.  
501 Fairmount Avenue, Suite 300  
Towson, MD 21286

Re: Eden Terrace  
Forest Conservation Variance  
Tracking #01-18-2844

Dear Mr. Chodnicki:

A request for a variance from the Baltimore County Code Article 33 Environmental Protection and Sustainability, Title 6 Forest Conservation was received by this Department (Environmental Protection and Sustainability, or EPS) on October 29, 2018. The request seeks a variance to remove two specimen trees due to their poor condition and close proximity to the proposed residences on Lots 15 and 18 of a 23-lot subdivision. These trees were originally shown to be retained on Forest Conservation Plan (FCP) #FC-13-027-revised, dated January 23, 2015. The specimen trees to be removed are a 52-inch DBH chestnut oak in poor condition and 40-inch DBH chestnut oak in good condition. The latter tree has already been removed with EPS permission due to the threat it posed to the nearby dwelling. Neither tree is within a forested area. The other specimen trees proposed for retention on the approved FCP will remain.

The Director of EPS may grant a special variance to the Forest Conservation Law in accordance with criteria outlined in Section 33-6-116(d)(1) of the Code. There are six (6) criteria listed in Subsection 33-6-116(d) and (e) that shall be used to evaluate the variance request. One (1) of the criteria under Subsection 33-6-116(d) must be met, and all three (3) of the criteria under Subsection 33-6-116(e) must be met, in order to approve the variance.

The first criterion (Subsection 33-6-116(d)(1) of the Code) requires the petitioner show the land in question cannot yield a reasonable return if the requirement from which the special variance is requested is imposed and will deprive the petitioner of all beneficial use of the property. The applicant is seeking to complete the build-out of a 23-lot major subdivision in which the specimen trees are located. Several of the lots within the subdivision have already been developed with single family dwellings. As it would still be possible to construct homes on the property while avoiding impacts to trees, full

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application of the law would not deprive the applicant of all beneficial use of the property. Consequently, we find that this criterion has not been met.

The second criterion (Subsection 33-6-116 (d) (2) of the Code) requires that the petitioner show that his/her plight is due to unique circumstances and not the general conditions of the neighborhood. The petitioner's plight is due to the location and declining condition of the specimen trees originally proposed to be retained rather than general conditions of the neighborhood. Therefore, we find that the second criterion has been met.

The third criterion (Subsection 33-6-116(d) (3) of the Code) requires that the petitioner show that the special variance requested will not alter the essential character of the neighborhood. The surrounding neighborhood consists of single-family homes of similar density to that proposed for the subject property, with the Baltimore Beltway bordering the subdivision to the east. As such, the removal of these trees will not alter the essential character of this neighborhood. Therefore, this criterion has been met.

The fourth criterion (Subsection 33-6-116(e) (1) of the Code) requires that the granting of the special variance will not adversely affect water quality. The project will not impact any wetlands, streams, or associated buffer areas. Furthermore, stormwater management practices to provide water quality management have already been implemented at the site. As a result, this Department finds that the proposed variance will not adversely affect water quality. Consequently, this criterion has been met.

The fifth criterion (Subsection 33-6-116(e) (2) of the Code) requires that the special variance request does not arise from a condition or circumstance that is the result of actions taken by the petitioner. The petitioner has not taken any actions resulting in conditions or circumstances requiring this special variance prior to its request. Therefore, this criterion has been met.

The sixth criterion (Subsection 33-6-116(e)(3) of the Code) requires that the Director of EPS find that the special variance, as granted, would be consistent with the spirit and intent of Article 33, Title 6 of the Baltimore County Code. Although two more specimen trees are to be removed than originally proposed on the approved FCP, the applicant satisfied the reforestation requirement via the purchase of credit in a forest conservation bank. Moreover, all other remaining specimen trees within the subdivision will continue to be retained. Therefore, we find that this variance is consistent with the spirit and intent of Article 33, Title 6 of the Baltimore County Code and that this criterion has been met.

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Based on our review, this Department finds that all required variance criteria have been met. Therefore, the requested variance is hereby approved in accordance with Section 33-6-116 of the Baltimore County Code contingent on the following conditions:

1. Mitigation for the removal of the 40-inch DBH chestnut oak shall be addressed by a payment of \$1,413.00 by February 14, 2019 or prior to EPS approval of any further permits, whichever comes first. Checks shall be made payable to Baltimore County. Mitigation for the removal of the 52-inch DBH chestnut oak is not required given its poor condition.
2. The following note must be on all subsequent plans for this development project:  
  
“A variance was granted on November 14, 2018 by Baltimore County Dept. of Environmental Protection & Sustainability to allow removal of two additional specimen trees beyond the December 17, 2014 variance. Conditions were placed on this variance to ensure that the spirit and intent of the Forest Conservation Law were met including payment of a fee in lieu of specimen tree mitigation.”
3. This variance approval does not exempt future development activities or future removal of specimen trees at this site from compliance with Baltimore County’s Forest Conservation Law.

It is the intent of this Department to approve this variance subject to the above conditions. Any changes to site layout may require submittal of revised plans and a new variance request.

Please have the party responsible for meeting the conditions of this variance sign the statement on the following page and return a signed copy of this letter to this Department within 21 calendar days. Failure to return a signed copy may render this approval null and void, or may result in delays in the processing of plans for this project.

If you have any questions regarding this correspondence, please call Ms. Libby Errickson at (410) 887-3980.

Sincerely yours,

David V. Lykens  
Deputy Director

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DVL/lbe

- c. Mr. Nick Groseclose, K. Hovnanian Company  
Ms. Marian Honeczy, Maryland Dept. of Natural Resources

I/we agree to the above conditions to bring my/our property into compliance with  
Baltimore County's Forest Conservation Law.

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Owner's Signature

Date

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Printed Name